BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No. 01-CA-214272

MATSU CORP. d/b/a Matsu Sushi,

Respondent,

And

Flushing Workers Center,

Charging Party.

EMPLOYER'S POST-HEARING BRIEF

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Statement of the Case

The complaint in this matter was filed on March 29, 2018. *See* Compl. The charging party, Flushing Worker's Center, claims that respondents interfered with, restrained, or coerced Jianming Jiang and Liguo Ding in the exercise of their right to engage in protected concerted activities for the purpose of mutual aid and protection by terminating Mr. Jiang and Mr. Ding after they informed their supervisor Yan "Maggie" Lin that they would not work a 36 hour shift for health and safety reasons.

Employer denies this allegation. Employer never terminated Mr. Jiang and Mr. Ding. Additionally, Mr. Jiang and Mr. Ding refused to work because of a dispute over an investment as shareholders of the restaurants, not health and safety concerns. Thus, employer did not interfere with, restrain, or coerce Jiang and Ding. Jiang and Ding did not act for the purpose of mutual aid and protection and are not entitled to protection under 29 U.S.C. § 158.

A formal hearing was conducted before the Honorable Chief Associate Administrative Law Judge Kenneth Chu on July 30, 2018.

Statement of the Facts

Matsu Sushi Restaurant (the "Employer" or "Restaurant") is a restaurant serving Japanese cuisine located in Westport, Connecticut. From Monday through Thursday the restaurant is open from 11:00 a.m. to 10:00 p.m. Hearing Transcript ("Hr'g") 13:3-13:4. On Fridays, the restaurant is open from 11:00 a.m. until 11:00 p.m. Hr'g 13:4. On Saturdays and Sundays the restaurant is open from 12:00 p.m. until 10:00 p.m. Hr'g 13:4-13:5. Generally, kitchen staff work 51 or 52 hours a week. Hr'g 14:8. The restaurant has 4 kitchen staff, 4 sushi chefs, and three servers. Hr'g 13:22-14:6. The employees are all under the common supervision

of the general manager, Yan "Maggie" Lin. Hr'g 13:14-13:15. Ms. Lin reports to Michael Cao and Marty Cheng, who together are majority shareholders. Hr'g 13:8-13:13, 105:3-105:7. Michael Cao is also the head sushi chef. Hr'g 104:25. Marty Cheng is not involved in the day to day operations but is a partner with Michael Cao. Hr'g 105:9, 120:7-120:9.

Occasionally, employees were assigned to work on "big orders." Hr'g, 21:25-22:3. These were orders to provide food for large groups of people. Hr'g, at 22:4-6. Ms. Lin would post the notice upon receipt of the big orders onto a group chat and the employees divided the work amongst themselves. Hr'g 26:7-26:18. Mr. Ding and Mr. Jiang supervised the kitchen staff and made arrangements for big orders. Hg'r 111:14-111:23. The employees usually prepared the food in the week leading up to the delivery date and then cooked the food during a five-hour shift from 1:00 a.m. until 6:00 a.m. the morning of the delivery. Hr'g 22:5-23:16. The client would then send someone to pick up the food. Hr'g 29:7. The only extra shift required for the big orders would be the overnight shift leading up to the delivery, as employees would incorporate food preparation into their normal working hours leading up to the delivery. Hr'g 47:12-20. The day before a delivery an employee worked his normal shift. Then there was an extended period of rest until 1:00am, when the overnight shift began. The overnight shift usually ended at 6:00am, and the employees would take another extended rest until his next shift at 11:00am began. During extended periods of rest employees would sleep on the second floor of the restaurant. Hr'g 116:17.

In 2017 Jianming Jiang and Liguo Ding each owned five percent of the shares in Matsu Corp. Hr'g 105:12-13. They had been receiving dividends in addition to their normal wages for over ten years. Hr'g 105:23-106:12. In 2015, Matsu Corp. purchased Matsuri Sushi, another restaurant. The investment performed poorly, and Matsuri Sushi closed in September 2017.

Hr'g 18:106. Soon after, Mr. Ding and Mr. Jiang asked Mr. Cao and Mr. Cheng to return their investment, including investments in the closed Matsuri Sushi, even though they knew the investments were lost. There were disagreements over the valuation of Ding and Jiang's shares. Hr'g 38:7-17.

Ding had worked in the restaurant since 2003. Hr'g 55:12. Jiang had worked in the restaurant since 2002. Hr'g 83:13. Leading up to the failed Matsuri investment, Ding and Jiang never refused a big order, reported any health concerns as a result of a big order, or took time off as a result of a big order. Hr'g 41:4-21; Hr'g 46:2-5; Hr'g 67:19-24; Hr'g 90:15; Hr'g 110:12-16. In addition, there were no disciplinary problems in the workplace. Hr'g 48:11.

However, as a result of the investment dispute, Ding and Jiang's attitude in the workplace soured. They began smoking in the restaurant and would talk on the phone while others were working. Hr'g 39:4-8. Coworkers and customers began lodging complaints about the behavior. Hr'g 33:19; Hr'g 108:21-109:16. Hr'g 35:24. Once, Mr. Jiang was smoking in the restaurant and a customer complained about the smoke. Mr. Jiang denied it. There was a pregnant woman in the restaurant who was angry about the smoke, rushed into the kitchen and witnessed Mr. Jiang smoking. Hr'g 33:22-34:3.

In September of 2017, following the deteriorating relationship between Jiang, Ding, Cao, and Cheng, Mr. Ding and Mr. Jiang worked a big order. They both worked the shift the day before the delivery, worked the overnight shift, and then took turns working the shift following the delivery. Hr'g 22:25-23:16. Neither employee complained of any health concerns following this big order. Hr'g 41:4-21. Neither employee took any time off for their alleged week-long sickness.

On or about early December 2017 the manager of the restaurant, Ms. Lin, posted a notice regarding a big order with a delivery date of December 14, 2017 on a group chat. Hr'g 26:2-14. On December 6, 2017 Mr. Ding spoke to Ms. Lin in the company van on the way to work. Mr. Ding informed Ms. Yan that he would not work the five-hour overnight shift for this big order due to concern over his health. Hr'g 27:19-28:1. On December 7, 2017 Ms. Lin asked Mr. Ding if he would reconsider working the overnight shift for the December big order. Mr. Ding refused. Ms. Lin asked if he was refusing to work the overnight shift because of the investment dispute. Mr. Ding admitted that that was one reason he was refusing to work. Hr'g 63:5-8. Mr. Jiang called Ms. Lin on December 6, 2017 and informed her that he would not work the overnight shift as well. Hr'g 28:25-29:4. Mr. Ding and Mr. Jiang did not work the overnight shift for the December big order.

Ding and Jiang's refusal to work the big order caused great hardship for the employer. This occurred in the middle of the holiday season when there is typically a lot of business. Ms. Lin called employment agencies trying to find replacement workers, but could not find anyone on such short notice and during that busy season. Hr'g 44:10-19; Hr'g 118:21-119:1. Fortunately, the restaurant managed to complete the big order. Hr'g 44:22.

On December 8, 2017 Ms. Lin called Ding and Jiang and told them to stay home and get rested because they claimed that they were not in good health. Mr. Lin informed them when their health improved, they should contact the employer. Hr'g 32:6-16. Mr. Jiang and Mr. Ding did not show up for work after December 8, 2017. The only two people with authority to fire Ding and Jiang were the majority shareholders, Mr. Cao and Mr. Cheng. Hr'g 46:20; Hr'g 49:21-24. Ding and Jiang never contacted Cao or Cheng after leaving work on December 8, 2017. They never relayed to Cao or Cheng that they thought they had been fired. They never

complained to Cao or Cheng about being fired. They never approached Cao or Cheng to complain about the big orders. Ding and Jiang admitted that they had Cao and Cheng's contract information, including their wechat and phone numbers. Mr. Cao and Mr. Cheng never gave any oral or written notice of termination. Hr'g 119:11-120:25. Ding and Jiang did contact Ms. Lin to collect wages they were owed after December 8, but other than that Ms. Lin had no contact with them as well. Hr'g 46:9-12. Ding and Jiang never asked to return to work. Nor did Ding and Jiang ever produce any medical records that they were not in good health and could not work on the big orders.

Argument

I. JIANMING JIANG AND LIGUO DING ARE NOT CREDIBLE WITNESSES.

The charging party claims that respondents terminated Ding and Jiang's employment because they engaged in protected concerted activities for the purpose of mutual aid and protection, violating of Section 8(a)(1) of the National Labor Relations Act. Compl. ¶ 5,8. Ding and Jiang testified that Ms. Lin told them to stay home and rest on December 8th, 2017. Most of the evidence allegedly supporting the allegation termination and engagement concerted activities for the purpose of mutual aid or protection comes from Ding and Jiang's own self-serving and self-contradictory testimony. Their testimony should be disregarded or viewed with heavy skepticism in light of their material contradictory statements throughout the record, penchant for exaggeration and misrepresentation, and nonresponsive nature under cross examination.

A. Mr. Ding and Mr. Jiang's testimony that they worked 70 hours a week is unreliable and contradicted by their own statements and other evidence and testimony

Ding and Jiang both testified that they worked 70 hours a week. This testimony was offered to bolster their allegations about long hours and unsafe working conditions at the employer's workplace, in support of the fabricated theory that Ding and Jiang's refusal to work was for mutual aid and protection. This 70-hour work week is largely exaggerated and not supported by the facts of this case and common sense.

Mr. Ding testified that he worked about 70 hours a week. However, when asked to give a description of his shifts by the hour, his testimony varied wildly. First, instead of giving a start time for his shifts, Mr. Ding stated when he left his home. In other words, all of his calculations with regards to hours worked included travel time to the restaurant even though the restaurant provided transportation for them. Any conclusion of hours work based on Mr. Ding's testimony will be inherently flawed because they would all use start times of when he left his home.

Mr. Ding then claimed he finished work around 10pm. However, when he broke down his schedule by day, he claimed that on Fridays and Saturdays he worked until 11pm and from Monday to Thursday he finished work at around 11pm. These two contradicting end times for his shifts will make it even more difficult to discern how many hours he worked each week.

In addition, Ding also mentioned that by the time he got home it would be midnight. Ding already claimed that he was factoring travel times into his hours worked calculation. If this is the case, all of his end times should be 12:00am.

Ding claimed to "finish work" by 10pm in one instance, 11pm in another instance, and also imply that his workday ends at 12:00am. Without a clear start or end time to his schedule, it's impossible to rely on Mr. Ding's testimony to figure out how many hours a week he worked.

Mr. Ding's testimony as to the hours he worked also conflicted with the hours of operation for the restaurant. The restaurant is open from 11am – 10pm Monday to Thursday, 11:00am –

11:00pm on Friday, and 12:00pm – 10:00pm on Saturdays and Sundays. The restaurant opens at different times depending on the day, yet Mr. Ding maintained that he left the house every day at 8am. Similarly, the restaurant closed at different times throughout the week, yet Mr. Ding maintained that he arrived home around midnight.

Mr. Jiang also claimed that he and Mr. Ding worked 70 hours a week. However, his calculations included time spent commuting and time spent on big work orders. With regards to the big orders, Mr. Jiang claimed that they'd have to work 36 hours and would receive no breaks and that he factored that into his calculations. However, on cross examination, opposing counsel asked Mr. Jiang to confirm that he had only participated in one big order in the six months leading up to December 2017. Mr. Jiang replied that he did not remember. His calculations were based on work done on big orders, but he could not even remember how many big orders he participated in in the six months leading up to December 2017. Any estimates on his part for hours spent working are thus not credible and should be disregarded.

Ding and Jiang's testimony also conflicted with Yan Lin, the manager of the restaurant's testimony. Ms. Lin testified that Ding worked 51 or 52 hours a week. Ms. Lin is manager of the restaurant and is responsible for tracking the hours worked and handing out pay to the employees. She kept records of the days each employee worked, and the hours worked each day was generally fixed. As such she was in a better position to gauge how many hours the employees worked.

Thus, the court should disregard Ding and Jiang's testimony that they worked 70 hours a week and accept the more credible and sensible testimony from Ms. Lin that kitchen staff worked 51 or 52 hours a week.

B. Jiang and Ding's testimony that they worked for 36 hours straight during big orders is grossly exaggerated and not supported by other evidence and testimony in the record

Jiang and Ding allege that they were terminated for engaging in concerted activities for mutual aid and protection. Crucial to that allegation is their claim that they were protesting unsafe working conditions. To bolster this claim. Both testified that they were required to work 36 hour shifts for the big orders. However, this allegation of 36-hour shifts is a gross misrepresentation and is not supported by the facts of this case and common sense. Ding and Jiang put forth contradictory and incredulous testimony to support the 36-hour shift claim. This testimony is not credible and should be disregarded in its entirety. Ding and Jiang's testimony to other facts of this case should be viewed under heavy suspicion in light of their discreditable testimony.

Ding and Jiang claimed that the employer required them to work for 36 hours nonstop to complete big orders. They would work a normal shift until 10pm. Then the other workers left and they would begin processing food for the big order. They would work through the night and into the next day cooking the food. They would deliver the food to the client in the morning and then continue with the normal shift the day of the delivery and finish that shift at 10pm. Throughout this 36-hour shift, they were not permitted to sleep, could not take any breaks, and did not have time to eat any meals.

Ding and Jiang grossly misrepresented the working conditions of the big order. Ding admitted that in the past he worked roughly one big order a week. He has been working with this employer since 2003. If Mr. Ding's testimony is true, he has worked 36 hour shifts once a week since 2003 and never complained, presented medical evidence of harm resulting from such shifts, or refused to work such an onerous shift. That would have been 14 years performing a

dangerous job involving open flames, sharp utensils, and other dangerous conditions once a week for thirty-six hours straight with no rest or food. Such an extreme claim requires more foundation than the self-serving statements of two individuals.

Weighing against them is the common-sense notion that human beings cannot sustain that kind of toil. The obvious conclusion is that Mr. Ding exaggerated the number of hours worked and time allotted for breaks and rest during these big orders.

Ding and Jiang's statements fly in the face of more reliable and credible testimony from the manager, Yan Lin, and shareholder and head sushi chef Michael Cao. Referring to the September 2017 big order, Ms. Lin gave credible account of the typical work schedule surrounding a big order. For the September 2017 big order Mr. Ding and Mr. Jiang worked the shift the day before the deliver from 11:00am – 11:00pm. There was an extended period of rest from 11:00pm until 1:00am before they both worked the overnight shift from 1:00am – 6:00am. After another extended period of rest, both employees took turns working the full shift following the delivery. Contrary to Ding and Jiang's testimony, there were three separate shifts with extended periods of rest in between. The total number of hours worked for these shifts was significantly less than 36. It is normal shift plus about 5 hours work from 1am to 6pm. It should also be noted that neither Mr. Ding nor Mr. Jiang mentioned that they took turns on the shift following the delivery.

Mr. Cao later provides more detail on how the shifts surrounding the big orders are structured. There are two extended periods of rest in between shifts. The first is from 11:00pm until 1:00am. The second is from 6:00am until 11:00am. During these periods, employees can sleep on the second floor of the restaurant.

Mr. Cao and Ms. Lin's creditable testimony further demonstrate how far Ding and Jiang exaggerated the working conditions of the big order shifts. The 36-hour shift claim is an integral fact directly stated in the complaint. It is the buttress upon which the Section 8(a)(1) violation rests. The charging party claims that Mr. Ding and Mr. Jiang were protesting unsafe working conditions stemming from having to work for 36 hours straight. Therefore, both witnesses have put forth unreliable testimony about a material fact that is alleged in the complaint. Their testimony should be discredited with regards to the 36-hour shift claim and viewed with heavy suspicion with regards to other facets of this case.

C. Mr. Ding and Mr. Jiang were Generally Nonresponsive Under Cross Examination

Ding and Jiang's lack of credibility can be further observed in their nonresponsive nature under cross examination. On cross examination, the employer's counsel asked Mr. Ding if Marty Cheng came to the restaurant for shareholder meetings and meals. Hr'g 78:23. Mr. Ding stated that he did not know the purpose of the visits. Hr'g 78:25. This response is directly contradicted by earlier testimony from Yan Lin, the manager of the restaurant. She stated that occasionally there would be shareholder meetings. Then they (employee/shareholders) would communicate with the owners (of which Marty Chen is one). Hr'g 24:18-20. Plaintiff's counsel called Ms. Lin as their witness and made no attempt to rebut her statement that employees talked to the owners at these shareholder meetings. In this light, Mr. Ding's claim that he did not know why Mr. Cheng was in the restaurant is evasive and suspicious. Mr. Ding would like to downplay the role of Mr. Ding and Mr. Jiang as shareholders in order to make it seem as if they

refused to work as a result of unsafe working conditions, instead of a shareholder dispute. Mr. Ding's evasive answer here is nothing more than an attempt to avoid the shareholder issue.

Later in the hearing, on direct examination, Mr. Ding claimed that on December 7, 2017, Ms. Lin asked him if he would work the overnight shift one more time. There was no indication of any threat. Hr'g 62:25-63:10. However, on cross examination, Mr. Ding changed his testimony when asked about his conversation with Ms. Lin on December 7, 2017. He then claimed that Ms. Lin threatened him to finish the order or be liable for any consequences. Hr'g 74:16-19. Yet he never reported this threat to Mr. Cao or Mr. Cheng. He had Mr. Cao and Mr. Cheng's contract information and they were also on the same WeChat groups. Furthermore, Mr. Jiang testified that he never received any threats from Ms. Lin. Hr'g 97:2. When the employer's counsel asked Mr. Jiang if he had any knowledge of Ms. Lin threatening Mr. Ding., Mr. Jiang replied "I don't know." Hr'g 97:12. However, Mr. Ding and Mr. Jiang previously testified that when this alleged threat took place, they were supposedly in frequent and constant communication planning their protest and conferring with each other and their counsel. Hr'g 84:13-85:6. It seems implausible that if Ms. Lin had threatened Mr. Ding to work the big order, Mr. Jiang would have no knowledge of it.

On cross examination, the employer's counsel asks Mr. Jiang if he ever asked not to do a big order before December 2017. Instead of answering yes or no, Mr. Jiang launches into an account of how he refused the December big order for health reasons. His answer was totally non-responsive to the question posed and a simple yes or no response would've sufficed.

The record is littered with other instances of non-responsiveness on the part of Jiang and Ding. This nature of testimony highlights their evasiveness and untrustworthiness while testifying and further detracts from their credibility. *See* Hr'g 59:10, Hr'g 90:15.

II. JIANG AND DING'S ACTIVITIES WERE NOT PROTECTED UNDER SECTION 7 OF THE NLRA BECAUSE THEY WERE NOT FOR MUTUAL AID AND PROTECTION.

Mr. Jiang and Mr. Ding's refusal to work was not a right guaranteed under 29 U.S.C. § 157. Their main reason for refusing to work the big order was the dispute with Mr. Cao and Mr. Cheng over their investment, not any health or safety concerns. This dispute was not related to the terms or conditions of their employment and thus any acts related to it are not for "mutual aid or protection."

The NLRA forbids an employer from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 157. *29 U.S.C. § 158*. Section 157 gives employees the right to engage in concerted activities for the purpose of mutual aid or protection. *29 U.S.C. § 157*. Mutual aid or protection generally means efforts to improve the terms and conditions of employment. *See* Eastex, Inc. v. NLRB, 437 U.S. 556, 564-70 (1978); Pelton Casteel, Inc. v. N.L.R.B., 627 F.2d 23, 28 (1980).

Mr. Ding and Mr. Jiang claim that they were fired for refusing to work on a big order due to health-related reasons. However, the evidence and testimony do not support this conclusion. Instead, the evidence and testimony suggest that the dispute over their investments in the company was the primary factor in their decision not to work the big order.

Matsu Corp. acquired Matsuri Sushi restaurant in 2015. In September 2017, Matsuri Sushi restaurant closed. Hr'g 18:106. That is also when the work order Ding and Jiang worked supposedly caused them health problems. Mr. Ding testified that on December 7th at around 2 p.m. Maggie asked him if he stopped working because he had not received his deposit. **Mr. Ding admitted that the fact that the boss had not refunded the deposit influenced his**

decision not to work. Hr'g 63:5-8. This admission is very significant considering the evasive and self-serving nature of Mr. Ding's testimony. It is very clear that the investment dispute is the main factor of the work stoppage, if not the sole factor.

Mr. Ding claimed that the work he did on previous big orders made him sick. Yet he never presented a doctor's note. Hr'g 46:5. He never made any complaint about his health until the dispute over the deposits arose. On cross examination, when asked if he had previously refused any big order shifts, **Mr. Ding stated that in the past, even though he worked big orders, he received a reward from the restaurant's profits, and thus would still work even though he was very tired**. Hr'g 67:20-24. This answer clearly demonstrates that he was fine with working the big orders so long as the restaurant was profitable and he received the dividends stemming from his rights as a shareholder, not an employee. It also suggests that his health and safety was not a concern so long as he was receiving steady dividends. Mr. Ding's alleged health concerns arose around the same time Matsu Corp.'s investment in Matsuri Sushi failed. This failed investment would have a negative impact on the profitability of the restaurant. Mr. Ding has already made clear that he was fine working so long as he was receiving steady dividends. It was because of lack of steady dividends that Mr. Ding refused to work the big order.

Mr. Jiang also claimed that he did not work the big order for health and safety reasons. Yet he also never presented a doctor's note or gave any indication that he was sick or that the work was having an adverse effect on his health until his conversation with Ms. Lin on December 6th, 2017. Hr'g 46:2. This was a week before the delivery date of the big order. At first, Mr. Jiang testified that he and Mr. Ding received notice of the December 2017 big order on December 5, 2017. Hr'g 85:9-14. However, on cross examination with the employer, Mr. Jiang

changed his testimony and admitted that they had notice of the December big order before December 5, 2017:

> Q My question is specific as to December's big work order. Did you talk to Mr. Ding at all before December 8th, 2017?
> A We did. Before December 8th, we knew that we would be having a big order coming. So the message was sent on December 8th in the reach-out. However, that message was only confirming the number of people, number of guests, and also the voting of the quantity of food. Since we have worked with this company for long time, we knew that the big order would be coming soon, but it just so happened that before that, we did not know the exact timing and how many people were dining.
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> Hr'g 92:11-20.

A key allegation in the complaint is that Mr. Jiang and Mr. Ding refused to work the big order due to health and safety concerns. Mr. Jiang originally stated that he informed the Ms. Lin that he would not work the big order soon after receiving notice of the big order. Yet, upon cross examination his story changed and he admitted that he had notice of the big order before Ms. Lin posted it on the group chat. Mr. Jiang had motive to misrepresent when he received notice in order to make it seem more likely that his refusal to work was tied to health concerns. If Mr. Ding and Mr. Jiang were truly concerned for their health, there was no reason for them to wait so long to inform the Restaurant of their concerns. Instead, they chose to announce their protest a week before the big order was due. The timing suggests that his refusal to work was more of an attempt to punish or leverage Mr. Cao and Mr. Cheng with regards to the investment dispute.

All of these facts, taken together, show that Ding and Jiang were motivated by the investment dispute and protesting as shareholders, not employees. Their protest was not related to wages or working condition. Therefore, their protest was not for mutual aid and protection and does not enjoy the protection of Section 7 of the NLRA.

III. EMPLOYER DID NOT TERMINATE LIGUO DING AND JIANMING JIANG

Employer did not terminate Mr. Jiang and Mr. Ding's employment. 29 U.S.C. § 158 states that it shall be an unfair labor practice for an employer to interfere with restrain, or coerce employees in the exercise of the rights guaranteed in 29 U.S.C. § 157. The evidence has clearly shown that Mr. Jiang and Mr. Ding were not exercising any relevant rights. However, even if they were, employer did not interfere with, restrain, or coerce employees in the exercise of those rights because employer did not terminate Mr. Ding and Mr. Jiang.

After Mr. Jiang and Mr. Ding made complaints about their health, Ms. Lin asked them to take a rest from work. When they were feeling better they should inform the employer. This took place December 8, 2017. Hr'g 32:6-16. Mr. Jiang and Mr. Ding reported to work that day and never showed up again. They reached out to Ms. Lin to inquire about the balance of their wages but otherwise they never reached out to Ms. Lin, Mr. Cao, or Mr. Cheng until the commencement of this action. Hr'g 46:9-12. Mr. Jiang and Mr. Ding were never terminated. They were instructed to take some time to rest and then to inform the restaurant when they were ready to return. They simply never returned.

Mr. Ding and Mr. Jiang testified that they called Ms. Lin after their last day at the restaurant (December 8, 2017) to ask when they could return. Hr'g 63:21-64:7; Hr'g 87:1-11. However, their testimony is not credible. Ms. Lin and Mr. Cao have testified on their behalf and for Mr. Cheng that they never received any such calls from Mr. Jiang or Mr. Ding. Mr. Jiang and Mr. Ding both admitted that they never reached out to Mr. Cao or Mr. Cheng. We have demonstrated that the questionable credibility of Mr. Ding and Mr. Jiang. Mr. Cao and Ms. Lin's testimony, on the other hand, was straightforward and presented a rational and logical

narrative. Mr. Jiang and Mr. Ding were two disgruntled employees with an investment dispute between them and the employer. That dispute was the motivating factor in their decision not to work. When the employer offered them a rest period in good faith, they simply asked for their pay and never returned.

Furthermore, Ding and Jiang's narrative seems incredible for a number of reasons. First, Ms. Lin did not have authority to hire and fire employees. She was simply a manager at the restaurant. The authority to hire and fire authorities lay with Mr. Cao and Mr. Cheng. Mr. Jiang and Mr. Ding have both admitted that they never received any notice of termination from Mr. Cao or Mr. Cheng and never reached out to the owners after December 8, 2017.

Additionally, Mr. Jiang and Mr. Ding were partners in the business and each owned 5% of the share in Matsu Corp. Both employees were essential to the restaurant and the owners had cause to fire them on previous occasions due to complaints and misbehavior but did not exercise that option. The charging party contends that the owners fired them in the middle of the holiday season, when business was very busy and it was hard to find replacement workers. Hr'g 44:10-19; Hr'g 118:21-119:1. This narrative does not make sense.

At the hearing the charging party pointed to affidavits Ms. Lin and Mr. Cao signed as proof that Mr. Jiang and Mr. Ding were terminated. The affidavits had a line stating that Mr. Ding was fired. However, the documents were not properly prepared and should be discredited with regards to any mention of firing employees. Ms. Lin, Mr. Cao and Mr. Cheng are not fluent in English. During the hearing they spoke in Chinese and had a third party translating for them. Paul Siegert, the attorney who prepared these affidavits, is not fluent in Chinese. He did not translate the documents before asking for a signature. He spoke in English. Mr. Siegert did not read the affidavit sentence by sentence. There was no translator present. Ms. Lin and Mr. Cao

never stated Mr. Ding was fired. These affidavits should not be relied upon as there are obvious deficiencies in how they were prepared as a result of a language barrier, especially considering the fact that there is no affidavit of translation attached anywhere.

It is clear from the testimony of Ms. Lin and Mr. Cao that Mr. Jiang and Mr. Ding stopped working after December 8, 2017 and never returned or contacted anyone at the restaurant except to receive wages. The testimony from Mr. Jiang and Mr. Ding stating otherwise is self-serving and not credible and the affidavit stating otherwise was improperly prepared and not reliable. The two employees were never terminated.

Conclusion

For the reasons set forth above, Respondent respectfully requests Your Honor dismiss the complaint in its entirety and grant Respondent other just and proper relief.

Dated: September 14, 2018
Glen Cove, New York

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